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BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Continue
Implementation and Administration, and
Consider Further Development, of
California Renewables Portfolio Standard
Program.

Rulemaking 15-02-020
(Filed February 26, 2015)

**REPLY COMMENTS OF THE OFFICE OF RATEPAYER ADVOCATES ON
THE PROPOSED DECISION IMPLEMENTING PROVISIONS OF
GOVERNOR'S PROCLAMATION OF A STATE OF EMERGENCY RELATED
TO TREE MORTALITY AND SENATE BILL 840 RELATED TO THE
BIOENERGY FEED-IN TARIFF IN THE RENEWABLES
PORTFOLIO STANDARD PROGRAM**

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October 24, 2016

I. INTRODUCTION

Pursuant to the Proposed Decision issued on September 27, 2016 in the above-referenced proceeding, the Office of Ratepayer Advocates (ORA) submits these reply comments.

II. DISCUSSION

ORA recommends the final decision maintain the current BioMAT pricing structure, as the Commission finalized the BioMAT starting price in Decision (D.) 14-12-081. The Commission should address parties' concerns regarding the verification of high hazard zone (HHZ) fuel use and monitoring the effectiveness of procuring HHZ fuel. The Commission should also address the Investor Owned Utilities' (IOUs) concerns regarding the allocation of BioMAT procurement costs across all Californians who will benefit from HHZ tree removal.

A. The BioMAT Starting Price For Category 3 Bioenergy Projects Should Not Be Increased

The Bioenergy Association of California (BAC) claims, "Failing to adjust the starting price does not meet the legal requirement of the Governor's Emergency Proclamation on Tree Mortality to 'take expedited action to ensure that contracts for new forest bioenergy facilities that receive feedstock from high hazard zones can be executed within six months.'"¹ BAC fails to identify any legal error. Rather, BAC attempts to relitigate issues already decided in D.14-12-081.² Thus, BAC's arguments should be disregarded.

BAC misinterprets the Governor's Emergency Proclamation on widespread tree mortality. BAC's suggestion that the Commission is not taking "expedited action" by failing to raise the starting price for Category 3 projects is inaccurate. The Emergency Proclamation states:

The California Public Utilities Commission shall take expedited action to ensure that contracts for new forest bioenergy facilities that receive fuel stock from high hazard zones can be executed within six months, including initiation of a targeted renewable auction mechanism and consideration of adjustments to the BioMAT program.³

¹ BAC Opening Comments on the Proposed Decision ("BAC Comments"), filed Oct. 7, 2016, p. 3.

² D.14-12-081, pp. 50-62 (establishing BioMAT program prices).

³ Governor's "Proclamation of a State of Emergency", dated Oct. 30, 2015, Ordering Paragraph 9, p. 3. Available at: https://www.gov.ca.gov/docs/10.30.15_Tree_Mortality_State_of_Emergency.pdf

In accordance with the directives set forth in the Emergency Proclamation, the Proposed Decision properly considered adjustments to the BioMAT program, ultimately declining to adopt higher starting prices in Finding of Fact 7 and Conclusion of Law 4. This is not inconsistent with the Emergency Proclamation, nor is it legal error. Furthermore, the BioMAT program is not the only opportunity to ensure the quick execution of contracts that use fuel from HHZs for bioenergy facilities. The Commission's current BioRAM effort, launched in late June 2016, also addresses the Emergency Proclamation. For the BioRAM, the IOUs started selecting bioenergy project bids in September 2016, and they will start executing contracts in mid-October 2016.⁴ Therefore, any claims that the Commission's failure to adopt a higher starting price is "in continuing violation of the Emergency Proclamation's requirement to ensure that contracts for new bioenergy projects can be executed within six months" disregards the Commission's ongoing efforts to address the statewide emergency and should be dismissed.

Additionally, BAC asserts without an increase in the BioMAT starting price for Category 3 projects, bioenergy projects will not accept a BioMAT price and contract until summer or fall of 2017.⁵ This claim is speculative and should be disregarded. BAC failed to present any evidence on the record reflecting this concern. To justify raising the BioMAT starting price, BAC relies on a three year old report⁶ and the February 12, 2016, Administrative Law Judge's Ruling.⁷ The small scale bioenergy market has evolved and changed from the conditions described in the 2013 report, and the ruling does not offer evidence of market conditions nor give any projections for when bioenergy facilities are most likely to accept the BioMAT starting price. Therefore, such references cannot be relied upon as evidence to justify raising the BioMAT price.

⁴ The Commission issued Resolution E-4770, dated March 17, 2016, to initiate BioRAM. The IOUs launched their BioRAM solicitations in late June 2016 and presented their initial evaluations of BioRAM project offers to their respective Procurement Review Groups (PRGs) in PRG meetings held in September 2016. The IOUs also announced in their September 2016 PRG meetings they expect to execute BioRAM contracts between mid-October 2016 and early November 2016.

⁵ BAC Comments, p. 3.

⁶ BAC Comments, p. 4, referencing the "Final Consultant Report: Small Scale Bioenergy: Resource Potential, Costs, And Feed-in Tariff Implementation Assessment," included as Attachment 1 to Final Staff Proposal on SB 1122 Implementation, dated November 19, 2013 in R. 11-05-005.

⁷ BAC Comments, p. 4.

B. The Commission Should Establish A Specific Timeline For Developing Third-Party HHZ Fuel Verification And Establish A More Robust Process To Monitor HHZ Fuel Use

The Center for Biological Diversity (Center) requests the Commission establish a specific timeline for developing a third-party fuels verification program.⁸ Pacific Gas and Electric Company (PG&E) also requests the Commission “set a reasonable timeframe for initiating this process [third-party fuel verification workshop] in order to provide clarity to the IOUs and to the market.”² ORA agrees.

Additionally, as part of the development of these fuel verification procedures, the Commission should adopt the Center’s recommendation that the Proposed Decision “be modified to make clear that fuel obtained from HHZs must meet one or more of the definitions of ‘byproducts of sustainable forest management.’”¹⁰ As the Center points out:

HHZs, particularly Tier 2 HHZs, are geographical, while the definitions of “sustainable forest management” adopted in D.14-12-081 are operational. Under the PD, facilities using any and all fuel removed from a HHZ—regardless of whether the trees removed were dead or posed a hazard, and regardless of whether fuel removal complied with the “sustainable forest management” provisions of the statute and D.14-12-081—would nonetheless be eligible for use by Category 3 facilities.¹¹

Without a mandate requiring the use of specific levels of HHZ fuels, there are few—if any—guarantees that significant usage of fuel sourced from trees endangering public safety will take place. If bioenergy generators fail to use HHZ fuel, ratepayers will be burdened with expensive bioenergy contracts that do not provide the benefit of decreased fire risk from tree mortality. The establishment of: (1) a specific timeline for developing a third-party fuels verification program, (2) a more precise definition of high hazard zone trees, and (3) the development of a more detailed, frequent, and formal methodology to evaluate the effectiveness of these BioMAT modifications towards procuring significant quantities of HHZ fuels, would

⁸ Center for Biological Diversity’s Opening Comments on Proposed Decision (“Center for Biological Diversity Comments”), filed Oct. 17, 2016, p. 6.

² PG&E Opening Comments on the Proposed Decision (“PG&E Comments”), filed Oct. 17, 2016, pp. 1-2.

¹⁰ Center for Biological Diversity Comments, p. 3.

¹¹ *Id.*

ensure that the emergency situation is being addressed and ratepayers are receiving the intended benefits.

C. The Commission Should Allocate BioMAT Costs Fairly Across All Those Who Will Benefit From HHZ Tree Removal

The Commission should consider the IOUs' requests that the costs of the BioMAT program be fairly shared among all Californians who will benefit from the removal of trees from HHZs. Southern California Edison Company (SCE) and San Diego Gas & Electric Company (SDG&E) request "all customers should pay above-market costs of BioMAT contracts through a nonbypassable charge."¹² PG&E requests "the Commission modify the CAM language in the Proposed Decision, specifically to note that the CAM charge is not limited to above-market costs or to incentives, surcharges or adders."¹³ ORA agrees.

The removal of dead and diseased trees in HHZs benefits all Californians. Because bioenergy is significantly more expensive compared to other RPS technologies, the costs of such procurement should not be borne solely by the IOUs' bundled customers. The Proposed Decision should be modified to address this issue as the first modified BioMAT program period is currently scheduled to commence in February 2017, only three months from today. Stakeholders need to know who is responsible for bearing the costs of the program before the modified program starts.

III. CONCLUSION

ORA respectfully requests the Commission consider and adopt ORA's recommendations discussed above.

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¹² SCE & SDG&E Opening Comments on the Proposed Decision, filed Oct. 17, 2016, p. 2.

¹³ PG&E Comments, p. 1.

Respectfully submitted,

/s/ LISA-MARIE CLARK

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October 24, 2016

VERIFICATION

I, Lisa-Marie G. Clark, am attorney of record for the Office of Ratepayer Advocates in proceeding R.15-02-020, and am authorized to make this verification on the organization's behalf.

I have read the attached *Reply Comments Of The Office Of Ratepayer Advocates On The Proposed Decision Implementing Provisions Of Governor's Proclamation Of A State Of Emergency Related To Tree Mortality And Senate Bill 840 Related To The Bioenergy Feed-In Tariff In The Renewables Portfolio Standard Program*, filed on October 24, 2016. I am informed and believe, and on that ground allege, that the matters stated in this document are true. I declare under penalty of perjury that the foregoing are true and correct.

Executed on October 24, 2016 at San Francisco, California.

/s/ LISA-MARIE CLARK

Lisa-Marie Clark
Attorney